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Mich. 591; *Minn. Lumber Co. v. The Whitebreast Coal Co.*, 160 Ill. 85; *Nat. Furnace Co. v. Keystone Mfg. Co.*, 110 Ill. 427; *Manhattan Oil Co. v. Richardson Lubricating Co.*, 113 Fed. 923; *Jenkins & Co. v. Anaheim Sugar Co.*, 247 Fed. 958, noted in 15 MICH. L. REV. 441; *Wood v. Duff-Gordon*, 222 N. Y. 88. As to the quantity which the vendee may require from the vendor, some courts have allowed increases over the usual demands when such increases were within the "legitimate requirements of the business." *E. G. Dailey Co. v. Clark Can Co.*, *supra*; *N. Y. Cent. Iron Works Co. v. U. S. Radiator Co.*, 174 N. Y. 331. In the last case the court denied that the vendee should be allowed to use the contract in a speculative manner, asserting that the increase should be for the "ordinary and regular business purposes." At the same time, it was admitted that the "needs of the vendee could be indefinitely enlarged when the market was in such a condition as to enable it to undersell its competitors because of the favorable contract with the vendor." Just where the line should be drawn depends largely on the circumstances of each case, and certainly in the principal case the court arrived at an equitable result, though not proceeding on the grounds of certain other courts. For further discussion of this problem, see 18 MICH. L. REV. 409.

CONTRACTS—ILLEGALITY—RIGHTS OF INNOCENT PROMISEE.—An order promulgated under the Defense of the Realm Act prohibited the purchase and sale of linseed oil by one who had not procured a license. P, who had a license, contracted to sell linseed oil to D, being induced to do so through D's false representations to the effect that he (D) also had a license. In an action by P to recover the amount of an award of damages for breach of contract, made by arbitrators, *held*, that the contract was illegal and that no claim under it could be enforced by anyone in a court of law. *Mahmoud and Ispahani, In re*, [1921], 2 K. B. 716.

While it is often said that an illegal contract is void, it may well be doubted whether this statement is strictly accurate. It would seem to be more nearly correct to say that such a contract is unenforceable at the suit of one who participated in the wrongdoing. Lord Mansfield put the matter thus:

"The principle of public policy is this: *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." *Holman v. Johnson*, Cowp. 341, 343.

To the same effect, see *Gibbs & Sterrett Mfg. Co. v. Brucker*, 111 U. S. 597. That a promisee who is justifiably innocent may recover damages for breach of an agreement that is illegal on grounds of public policy has frequently been decided. *Millward v. Littlewood*, 5 Ex. 775; *Kelley v. Riley*, 106 Mass. 339; *Waddell v. Wallace*, 32 Okla. 140; *Carter v. Rinker*, 174 Fed. 882; *Musson v. Fales*, 16 Mass. 331. No reason is apparent why the same rule should not be applied in the case of an agreement made illegal by statute in the

absence of an express provision making the contract void. In support of this view, see *Bloxsome v. Williams*, 3 B. & C. 232; *Gibbs & Sterrett Mfg. Co. v. Brucker*, *supra*; McCardie, J., in *Brightman & Co. v. Tate*, [1919], 1 K. B. 463, 472.

CONTRACTS—THIRD PARTY BENEFICIARY IN MICHIGAN.—Plaintiff's mother was dead. After considerable talk between plaintiff's father and Miss Carpenter, testatrix herein, it was agreed, in 1868, by the father that she should take plaintiff to live with her. It was agreed by Miss Carpenter that she would board, clothe and educate plaintiff until he was of age, and would give him everything she owned when she was through with it. Plaintiff was consulted, and consented. He was then seven years of age. He lived with Miss Carpenter until his marriage, and for the many years thereafter until her death gave her the care and attention of a son. She died in 1919, testate, having given all her property to others than the plaintiff, the bulk of it to the American Baptist Publication Society. Plaintiff brought this bill, asking specific performance of the above contract, and that he be decreed owner of all the realty and personalty of which Miss Carpenter died seized and possessed. *Held*, plaintiff was a party to the contract and to the consideration, and since the contract had been fully performed on his part is entitled to specific performance. *Bassett v. American Baptist Publication Society*, (Mich., 1921), 183 N. W. 747.

The court specifically denies that it is giving relief to a third party beneficiary, but states that there was such privity of contract between Miss Carpenter, plaintiff's father and plaintiff as to entitle plaintiff to maintain this suit, citing *Preston v. Preston*, 207 Mich. 681. See 18 MICH. L. REV. 58. *Preston v. Preston*, *supra*, and the Michigan decisions on third party beneficiary cases in general are very fully reviewed in 18 MICH. L. REV. 318.

CRIMES—SUFFICIENCY OF INDICTMENT.—Defendant was indicted under a statute prohibiting the placing of anything "on any railroad in this state calculated to obstruct, overthrow or direct from the track of such railroad any car," etc. The indictment alleged the placing upon the "tract" of the railroad of an obstruction calculated "to overthrow and direct from the track" the cars, etc. The lower court entered a judgment on a demurrer to the indictment. *Held*, the use of "tract" instead of "track" did not render the indictment bad, and the judgment should be reversed. *State v. Warfield*, (Md., 1921), 114 Atl. 835.

The court put its opinion on two grounds; first, that the statute prohibited placing obstructions on the "railroad," not specifically on the track thereof, and that "on the tract" was a proper allegation; second, that if "tract" were really intended to be "track," and was a mere mistake in spelling, such mistake could mislead no one. It is regrettable that such obviously harmless error can still be even thought of as a defense; but the decision is a relief from those such as *Evans v. State*, 34 Tex. Cr. 110, to the effect that the use of "possession" instead of "possession" rendered the indictment bad, despite its obvious contextual meaning; or *Commonwealth*